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October 20, 2021

VIA ELECTRONIC FILING
The Honorable Jocelyn G. Boyd
Chief Clerk/Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

Re: Applications of Duke Energy Progress, LLC and Duke Energy Carolinas, LLC for Approval of Smart $aver Solar as Energy Efficiency Program
Docket Numbers: 2021-143-E & 2021-144-E

Reply to ORS Response to Motion to Affirm Legal Standards

Dear Ms. Boyd:

I am filing this letter in reply to the response of the Office of Regulatory Staff ("ORS") to the Motion to Affirm Legal Standards (the "Motion") filed by Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (together, the "Companies") on October 7, 2021 in these dockets.

The intent of the Companies' Motion was to provide clarity around the legal standards to be applied to the Companies' programs proposed in these dockets. If the Commission intends to evaluate the programs as ones proposed under S.C. Code Ann. § 58-37-20—whether classified as energy efficiency, demand-side management, or some other program permissible under that statute—the rubrics for program evaluation and cost recovery under the Commission-approved Mechanisms are clear. If, however, the Commission intends to apply some other framework in its evaluation of the programs, or if the parties and the Commission are unclear as to what framework will be applied to evaluate the programs, the Commission's receipt of and context for evaluating evidence will be burdened by a lack of clarity.

The Companies' original intent was to package and propose the programs as EE/DSM programs under S.C. Code Ann. § 58-37-20, and the Companies believe that the programs fall clearly under that statute. The programs are packages of requirements and features that work together to cost-effectively reduce customers' demand on the grid. Because the programs fall under S.C. Code Ann. § 58-37-20, the Companies believe that the cost recovery provisions of that statute and the EE/DSM Mechanisms apply—meaning that the Companies are permitted recovery

of "net income" or "net lost revenues"—and that the results of the Utility Cost Test ("UCT") are determinative, as agreed to by ORS in the December 2020 settlement agreement and approved by Commission Order Nos. 2021-32 and 2021-33.

Respectfully, the Companies disagree with ORS's assertion that the Motion is procedurally improper. The Companies find no restriction in the Commission's regulations as to the substance of or relief sought by a party's motion. The South Carolina Rules of Civil Procedure, which also govern in administrative proceedings, refer to motions as "application[s] to the court for an order . . . made in writing" and which "set[s] forth the relief or order sought." SCRCP Rule 7(b)(1). The Companies' Motion certainly meets these requirements. While ORS would like to characterize the Companies' Motion as a Petition for Declaratory Order so that it can be denied on procedural grounds, such a technical response sidesteps the actual merits of the Companies' positions.

ORS is correct that the Companies believe that irrelevant evidence should be excluded from the record. The Companies would add that evidence whose probative value would be "substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading" the Commission should also be excluded. SCRE Rule 403. In this case, the Companies are concerned that an undue focus on inapplicable statutory provisions and inapplicable cost-effectiveness tests would result in irrelevant evidence in the record and unfair prejudice against the Companies' applications, confuse the issues, and mislead the Commission. The Companies' Motion was intended to avoid that outcome.

In spite of ORS's arguments, the programs absolutely do not "fall within" the Solar Choice program. While one eligibility requirement of the programs is that the customer take service under the Solar Choice tariff, participating customers must also (i) own an individually metered residence and install a solar PV system; (ii) participate in the Companies' Winter Bring Your Own Thermostat demand response program; (iii) be all-electric customers; and (iv) be subject to EE/DSM evaluation, measurement, and verification in order to validate savings associated with reduced demand (which will inform the Companies' cost recovery). As noted, the programs consist of a package of requirements and features that work together to cost-effectively reduce demand.

ORS's reference to the Companies' discovery response that the Commission "has not approved a DSM/EE program with an estimated TRC of less than 1" is misleading. Per the settlement agreement entered into by ORS, the transition from the TRC to the UCT took effect on January 1, 2021 and the Companies have submitted no other program applications to the Commission since that time. While ORS attacks the Companies' reliance upon the UCT as "straining credulity," the Companies believe that *departing* from the UCT "strains credulity."

ORS, along with all of the other parties to those dockets,[1] executed a settlement agreement approving of a transition to the UCT as the determinative cost-effectiveness test in Docket Nos. 2013-298-E for DEC and 2015-163-E for DEP (the "Mechanism Dockets"), which has meant that the UCT has been utilized by the ORS in all of the dockets since the UCT was adopted – except this docket. It would be arbitrary and capricious to establish parameters for evaluating EE/DSM programs in the Mechanism Dockets and then not use them in this EE proposal just because the proposal involves solar.

While time does not permit us to address every single element of ORS's response, the Companies respectfully but forcefully deny that "Duke has made aggressive efforts to limit ORS's ability to offer meaningful and important testimony and evidence" in this proceeding—there is nothing wrong with ensuring that the testimony provided in a case conforms to and addresses the applicable legal standards in the case, and that is what the Companies have sought in their filings. ORS points to the Companies' request to amend the procedural schedules in these dockets as seeking to "abbreviate" the pre-filed testimony schedule, though the Companies actually proposed to give ORS an additional week to prepare direct testimony and an additional three days to prepare surrebuttal testimony. Through the Motion at issue herein, the Companies merely seek clarity as to the legal standards to be applied to the proposed programs, and believe that such clarity will lead to an efficient hearing in which evidence is received and understood within the correct legal framework.

Kind regards,

Sam Wellborn

cc: Parties of record (via electronic mail)
David Butler, Chief Hearing Officer (via electronic mail)

[1] In Docket No. 2013-298-E, ORS, DEC, Walmart Inc., the South Carolina Coastal Conservation League, Southern Alliance for Clean Energy, Natural Resources Defense Council, and Sierra Club executed the settlement agreement. In Docket No. 2015-163-E, ORS, DEP, Walmart Inc., Nucor Steel - South Carolina, the South Carolina Coastal Conservation League, and Southern Alliance for Clean Energy executed the settlement agreement.